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November 4,2002

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Room CY-B-402
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in California, WC Docket No. 02-306

Dear Ms. Dortch:

Accompanying this letter is the Reply Filing In Support of the Application of SBC Communications Inc. ("SBC") for Provision of In-Region, InterLATA Services in California. This filing consists of (a) a stand-alone document entitled "Reply Comments of SBC In Support of In-Region InterLATA Relief In California," and (b) a Reply Appendix containing supporting material.

Because this reply filing contains confidential information, we are filing both confidential and redacted versions. Specifically, this reply filing includes:

a. One original of the portions of the filing that contain confidential information;

b. One original and four copies of the filing, redacted for public inspection; and

c. Five CD-ROM copies of the filing, redacted for public inspection.

REDACTED – For Public Inspection

Under separate cover, SBC is providing copies of this filing (redacted as appropriate) to Janice Myles, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room CY-B-402, 455 12th Street, S.W., Washington, D.C. 20544. SBC is also providing copies (redacted as appropriate) to the Department of Justice, the California Public Utilities Commission, and Qualex (the Commission's copy contractor).

All inquiries relating to access to any confidential information included with this filing (subject to the terms of any applicable protective order) should be addressed to:

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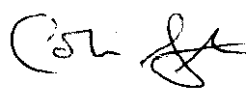
Thank you for your assistance in this matter. **If** you have any questions, please call me at 202-326-7968.

Yours truly,



Colin S. Stretch

Encs.

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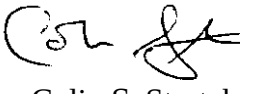

Colin S. Stretch

Encs.

REDACTED – For Public Inspection

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California	WC Docket No. 02-306

REPLY COMMENTS OF SBC IN SUPPORT OF IN-REGION INTERLATA RELIEF IN CALIFORNIA

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November 4, 2002

EXECUTIVE SUMMARY

The vast majority of participants in this proceeding – 147 of the approximately 160 parties that filed comments – support SBC's Application to provide interLATA services in California. In addition to this overwhelming support, the Department of Justice ("DOJ") "recommends that the FCC approve SBC's application," subject to the resolution of a few minor issues addressed below. And the California Public Utilities Commission ("CPUC or "California PUC"), after a review of Pacific's **271** showing that was unprecedented in scope and depth, has found compliance with the competitive checklist, subject only to two narrow issues that, as DOJ has properly explained, do not affect this Commission's evaluation.

The support of these commenters comes as no surprise. SBC's Application provided comprehensive evidence that the local market in California is open to competition, a fact that CLECs themselves have proven by building up an extensive market presence that has continued to grow substantially even in the short time this Application has been pending. Pacific has also demonstrated that its wholesale performance has consistently met **or** exceeded fully 90 percent of the relevant standards and benchmarks established by the CPUC, a level of performance that has continued – and in some cases improved – in the past two months. And the Application made clear that consumers stand to benefit, as they have in other states with section 271 relief, from the additional competition that SBC's entry into the interLATA market will bring to all segments of the communications marketplace in California.

As it has in every section 271 proceeding to date, AT&T opposes SBC's bid to compete for its long-distance customers. Yet in doing so, AT&T, despite its years **of** experience in the local market in California and its huge and rapidly growing customer base in the state, finds itself in the awkward position of having no significant operational concerns to report. Those

complaints it does raise are both minor and misguided. Specifically, AT&T's allegation that Pacific fails to provide adequate access to information regarding alternative community listings rests on a mischaracterization of the ordering process, and it is in any case belied by AT&T's own success in creating listings for its end users that include such alternative community designations. Its contention that Pacific fails to provide a test environment for both the North and South regions of the state is without any practical significance, since the production environment is identical in both regions. And its complaints about the adequacy of the call centers SBC makes available to CLECs are belied not only by the extensive documentation that SBC provides regarding the purposes of those centers, but also by the fact that AT&T itself has sought to use these centers for plainly inappropriate purposes.

Equally unavailing are AT&T's attacks on Pacific's UNE pricing. The California PUC set TELRIC-based UNE rates in a comprehensive proceeding that was resoundingly affirmed by a federal district court. Of the multitude of findings and judgments the CPUC made in the course of that proceeding, AT&T challenges only two: the inclusion in Pacific's nonrecurring costs of capitalized costs associated with the installation of UNEs, and a separate charge for vertical switching features. Both are consistent with TELRIC. As the Commission's orders make clear, costs associated with the installation of UNEs – whether capitalized or not – should be recovered in nonrecumng rates. And because the costs of using vertical features – just like the costs of a switch – are incurred when the features are actually used, it is entirely appropriate to recover those costs in a separate, usage-based charge.

AT&T's challenge to Pacific's UNE rates thus comes down to the allegation that, because those rates were set approximately three years ago, they are too old. As the D.C. Circuit

recently explained, however, "the mere age of a rate" is insufficient to call it into question. Indeed, the Supreme Court has noted that "built-in lags in price adjustments" are a necessary and desirable aspect of the Commission's pricing rules.

To provide the Commission added comfort regarding Pacific's UNE rates, SBC has established that Pacific's UNE rates are lower on a cost-adjusted basis than the rates in place in Texas, and therefore fall within the Commission's benchmark analysis. While AT&T attempts to use this proceeding collaterally to attack the approved Texas rates, its complaints are better addressed to the Texas Commission, which is presently reviewing UNE rates. In any event, AT&T's substantive challenge to the Texas rates is wholly unpersuasive; although AT&T asserts that costs have declined in Texas since the rates were first established there. it bases this assertion on a misreading and misapplication of available cost data.

Unable to refute SBC's showing of checklist compliance, AT&T, joined on this point by several other commenters, claims that SBC's interLATA entry would be contrary to the public interest. This contention fails for at least two reasons. First, this Commissionpresumes that Bell company entry is in the public interest, provided the competitive checklist is satisfied and the local market is open to competition. That presumption is plainly warranted in this case, particularly in view of Pacific's CPUC-mandated performance assurance plan, which provides Pacific enormous incentives to continue to provide nondiscriminatory service after receiving section 271 relief.

Second, the so-called "evidence" on which commenters rely to rebut this public-interest presumption is largely irrelevant to the Commission's analysis. For the most part, they rely on outdated allegations – unaccompanied in most cases by any factual support – relating **to** retail

marketing practices, PIC administration, and other conduct unrelated to the openness of the local market to competition from CLECs. While some also object to Pacific's proposed scripts for joint marketing local and long-distance service, no one disputes that these scripts fall squarely within the "safe harbor" this Commission established in prior section **271** orders. Thus, in no case do these allegations establish that either the local or long-distance markets in California would be in any way harmed by SBC's interLATA entry.

Without any persuasive evidence of their **own** to rebut SBC's public-interest showing, commenters fall back on the assertion that the CPUC itself has expressed skepticism about the benefits **of** Pacific's entry into the intrastate, interexchange market. But the discussion to which these commenters point – which was appended to the CPUC's discussion **of** Pacific's compliance with the competitive checklist – does not represent the views of the California PUC. **As** DOJ points out, three of the five CPUC commissioners dissented from the discussion in question, and the CPUC has stated that it anticipates issuing a subsequent ruling on the matter in the near future.

More importantly, the CPUC's views on the public interest were set forth in connection with its analysis **of** a state law that the passage of the 1996 Act rendered irrelevant. As explained in SBC's opening brief, the 1996 Act gives this Commission exclusive authority to determine whether a Bell company satisfies the requirements for interLATA relief, and it makes clear that state-commission views on the public interest are entitled to no greater weight than the views of any other party. This Commission, moreover, has expressly concluded that state commissions have no authority to condition or deny Bell company long-distance entry (both interstate and intrastate). In order to reaffirm this Commission's exclusive jurisdiction over Bell company

entry into the market for in-region, interLATA services – and to ensure that the benefits of that entry to California consumers are not delayed by unnecessary and wasteful litigation – SBC urges the Commission once again to make unmistakably clear that, after this Commission has granted SBC long-distance authority under section 271, the CPUC may not condition or otherwise delay SBC's exercise of that authority.

The Commission should give no weight to commenters' efforts to capitalize on the **D.C.** Circuit's decision in Sprint v. FCC, by dressing-up their objections to Pacific's wholesale rates as "price squeeze" claims. Even assuming these claims bear on the openness of the local market – itself a highly dubious proposition – they involve pricing in markets (broadband Internet access, payphones, and high-capacity transmission) in which SBC faces fierce competition. SBC would have no power to recoup losses from a predatory strategy in these markets. The strategy hypothesized by these commenters is therefore flatly irrational. In any case, this Commission has set out clear standards of proof for reviewing price-squeeze claims in the section 271 context, and the commenters have not even tried to satisfy those standards.

AT&T's challenge to SBC's prospective compliance with section 272 is likewise misplaced. The long-distance affiliate SBC has in place in California is the exact same affiliate that is in place throughout the Southwestern Bell region. And SBC's showing of compliance with the section 272 safeguards in California is the same in all material respects as the showing it made in the five states in the Southwestern Bell region. Because the Commission approved that showing in each of those five states – and because no one has objected here to the way the section 272 affiliate is actually doing business in those states – it follows that SBC's showing here is sufficient. Indeed, if anything, SBC's showing of section 272 compliance in California is

stronger than it was in the southwestern Bell region, precisely because it builds on SBC's track record of compliance, as confirmed by a recently completed biennial audit.

The remaining issues commenters raise may be summarized and disposed of quickly:

- XO's challenge to Pacific's DS1 and DS3 rates rests exclusively on a claim – that the rates are higher than those in effect in another state – that the Commission has repeatedly said is insufficient to call into question the lawfulness of a rate.

- AT&T's challenge to Pacific's position on new combinations is directed at a negotiating position. Until that position is adopted by the CPUC, this Commission, or a federal court, Pacific will continue to provide new combinations in accordance with its existing agreements, which even AT&T concedes satisfy the requirements of the 1996 Act and the Commission's rules.

- Mpower's, Vycera's, and Telscape's late-filed challenges to Pacific's wholesale billing processes are based on substantial mischaracterizations of Pacific's bill format, and in any case fall well short of the standards to which the Commission has previously held commenters that seek to challenge an applicant's billing processes.

- XO's discussion of Pacific's performance in provisioning and maintaining DS1 loops paints an incomplete picture of that performance, which in fact is superior in most respects to the performance set out in other applications that have been approved.

- Telscape's late-filed complaint regarding shared transport ignores the fact that the Commission itself recently endorsed the CPUC order that established the offering on which SBC relies in the Application.

- As DOJ notes in regard to Checklist Item 11 (Local Number Portability), the suggestion that Pacific is required to implement a mechanized verification process – which the CPUC thought was necessary to show checklist compliance – has never been required of any 271 applicant, and Pacific has in any event implemented the requested process.

- PacWest's and RCN's contention that Pacific has denied them tandem rates for terminating traffic ignores the fact that the agreement language under which these carriers operate was voluntarily negotiated, and it expressly provides for such tandem rates only where the terminating carrier performs a tandem switching function, which neither PacWest nor RCN has suggested it does.

- The claim that Pacific must offer DSL transport at the wholesale discount under 47 U.S.C. § 251(c)(4) runs headlong into the Commission's conclusion in the

Arkansas/Missouri and Georgia/Louisiana orders that no such offering is presently required to demonstrate checklist compliance.

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The record in this proceeding demonstrates that SBC has done everything that Congress and this Commission have asked of it in implementing the local competition provisions of the 1996 Act and opening the local market in California. Under the standards set out in the Act and this Commission's prior orders, SBC should now be permitted to provide interLATA service in California. And, more importantly, California consumers should **now** be permitted to receive the benefits of increased competition in both the local and long-distance markets that will come with SBC's entry into long distance. The Commission should do its **part** to ensure that they do, by granting this Application.

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Arkansas/Missouri Order	Joint Application by SBC Communications Inc.. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region. InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001), appeal pending, AT&T Corp. v. FCC, No. 01-1511 (D.C. Cir.)
Five-State Order	Joint Application by BellSouth Corporation. et al.. for Provision of In-Region. InterLATA Services in Alabama. Kentuckv. Mississippi, North Carolina. and South Carolina, Memorandum Opinion and Order, 17 FCC Rcd 17595 (2002)
Georgia/Louisiana Order	Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services In Georgia and Louisiana, Memorandum Opinion and Order, 17 FCC Rcd 9018 (2002)
Kansas/Oklahoma Order	Joint Application by SBC Communications Inc., et al., for Provision **of** In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001), affd in part and remanded, Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001)
Massachusetts Order	Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001), aff'd in part, dismissed in **part,** remanded in part, WorldCom, Inc. v. FCC, No. 01-1198 (and consolidated cases), 2002 WL 31360443 (D.C. Cir. Oct. 22,2002)
Michigan Order	Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997)

New Hampshire/Delaware Order	Application by Verizon New England. et al.. for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware, Memorandum Opinion and Order, 17 FCC Rcd 18660 (2002)
New Jersey Order	Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region. InterLATA Services in New Jersey, Memorandum Opinion and Order, 17 FCC Rcd 12275 (2002), appeal pending, Manhattan Telecomms. Corp. v. FCC, No. 02-1237 (D.C. Cir.)
New York Order	Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999), aff'd, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000)
Oklahoma Order	Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934. as amended, To Provide in-Region, InterLATA Services In Oklahoma, Memorandum Opinion and Order, 12 FCC Rcd 8685 (1997)
Pennsylvania Order	Application of Verizon Pennsylvania Inc.. et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001), appeal uending, Z-Tel Communications. Inc. v. FCC, No. 01-1461 (D.C. Cir.)
Rhode Island Order	Application by Verizon New England Inc., et al., for Authorization To Provide In-Region. InterLATA Services in Rhode Island, Memorandum Opinion and Order, 17 FCC Rcd 3300 (2002)

South Carolina Order	Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934. as amended, To Provide In-Region. InterLATA Services In South Carolina, Memorandum Opinion and Order, 13 FCC Rcd 539 (1997), aff'd, BellSouth Corn. v. FCC, 162 F.3d 678 (D.C. Cir. 1998)
Texas Order	Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000)
Vermont Order	Application by Verizon New England Inc.. et al., for Authorization To Provide In-Region, InterLATA Services in Vermont, Memorandum Opinion and Order, 17 FCC Rcd 7625 (2002), appeal uending, AT&T Corp. v. FCC, No. 02-1152 (D.C. Cir.)
Virginia Order	Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia, Memorandum Opinion and Order, WC Docket No. 02-214, FCC 02-297 (rel. Oct. 30, 2002)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, **D.C. 20554**

In the Matter of` Application by SBC Communications Inc., Pacific Bell Telephone Company, and southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California	WC Docket No. 02-306

REPLY COMMENTS OF SBC IN SUPPORT OF IN-REGION INTERLATA RELIEF IN CALIFORNIA

The vast majority of comments in this proceeding support SBC's application for interLATA relief in California. Several of these comments attest to Pacific's efforts to ensure positive working relationships with its wholesale customers and thereby to provide a hospitable climate for them to compete in the local market. Thus, for example, FONES4ALL, a resale-based CLEC serving the greater Los **Angeles** area, "has a positive, productive relationship with its Pacific Bell account team, who have gone the extra mile to support [its] needs," and it attests that "its ordering and provisioning issues are resolved in an expeditious manner." FONES4ALL Comments at 1. Likewise, New Access Communications "ha[s] been impressed with. . . [its] account manager," and is "favorably impressed with the quality of service provided [by Pacific] to date." Comments of New Access Communications.'

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[1] See also, e.g., Comments of the Broadband Institute of California at **3** ("SBC-Pacific Bell has demonstrated its continuing intent [to] facilitate competition in its local market. It has made demonstrable efforts to comply with a growing, shifting set of state imposed conditions. In the last four years, SBC Pacific Bell has complied with more than **250** conditions set by the CPUC to ensure that California's telecommunication market is open to competitors."); Comments of Donald Vial, Former President of the California Public Utilities Commission ("Pac

Others commenters look forward to the benefits that SBC's entry into interLATA services will bring to both local and long-distance markets in California. The Alliance for Public Technology, for example, "has every reason to believe that California customers, particularly low volume users, will reap the same gains from lower prices and bundled services that Arkansas, Missouri, Kansas, Oklahoma, and Texas residents are experiencing with SBC's entry into those long distance markets." Comments of the Alliance for Public Technology at 4. The Los Angeles Area Chamber of Commerce stresses that "[k]eeping telecom costs under control is a priority," and predicts that, once SBC enters the interLATA market, "competing companies would respond by reducing rates, introducing new technologies, and providing their customers with higher quality **of** service, which provides benefits to consumers and businesses alike." Comments of the Los Angeles Area Chamber of Commerce. Others echo that point, explaining that, if SBC is "allow[ed] . . . to enter the long distance market, the competition will force telecom providers to offer lower prices and promotional incentives." Comments of Advanced Fibre Communications.[2]

Bell has unbundled its service[s], priced them under CPUC regulation . . . for CLECs to compete, and now must have the opportunity to bundle and sell its own services, including inter-exchange services, to capture for consumers its economies of scale and scope.").

[2] See also, e.g., Comments of Sunrise Telecom ("[A]s a California-based company, we recognize the benefits of a truly open and competitive California[] long distance market."); Comments of Anthony Pescetti, Assembly Member - 10th District, California Legislature ("SBC Pacific Bell's entry will benefit California consumers . . . estimates by the Telecommunications and Research Action Center put the savings in California at up to $800 million a year."); Comments of Bill Morrow, California State Senator and Vice Chairman of the State Senate Energy, Utilities, and Communications Committee ("SBC Pacific Bell's long distance entry will spur competition. . . and add substantial consumer benefits. I know that consumers, businesses, and organizations in my district want to see those increased benefits."); Comments of the El Centro Chamber of Commerce and Visitors Bureau ("Approving Pacific Bell's application is the only way to give businesses and consumers the full and free choice that they want and deserve."); Comments of the Pasadena Chamber of Commerce and Civic Association ("Our

Still other commenters focus on Pacific's good corporate citizenship in California, emphasizing the positive contribution Pacific and its employees have made to communities throughout the state. See, e.g., Comments of Art Armendariz, Mayor, City of Delano ("SBC Pacific Bell has proven itself to be a good corporate citizen – providing thousands of jobs to Delano area residents and acting as a major sponsor and donor to countless community programs and services."); Comments of Cadence Industries ("Cadence Industries has had a long-term relationship with SBC Pacific Bell – the company has been a good, solid corporate citizen; it makes positive contributions to the state and our local economic efforts, and its employees are involved in the communities in which they live and work."); Comments of Advanced Fibre Communications ("SBC Pacific Bell has proven itself time and time again by investing back into their business and contributing to California's economy."); Comments of the Economic Development Alliance for Business ("SBC Pacific Bell . . . has a demonstrated record over many years of excellent support of the community both in their financial contributions and in the volunteerism and leadership of their employees."); Comments of the Honorable Heather Fargo, Mayor of Sacramento ("The City of Sacramento has benefited greatly through our relationship with SBC Pacific Bell and their employees. SBC Pacific Bell has been an outstanding corporate

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organization supports allowing more carriers to compete **in** [the long-distance] market with the expected result of lower prices and more choice for all consumers."); Comments of Jeffrey Cole, Director, UCLA Center for Communication Policy ("It is for the betterment of the telecommunication[s] industry, through increased competition and increased incentives to deploy new services, that I fully endorse and support SBC Pacific Bell's application, now pending before the [C]ommission."); Comments of Communications Workers of America at 1 ("Pacific's entry into the long-distance market in California is in the public interest. First, it will increase competition in the long-distance market, particularly for residential consumers. . . . Second, [it] will promote the important goal of the 1996 Telecommunications Act to create good, high-wage jobs in the telecommunications industry.").

citizen in our City. They have given generously to thousands of community programs and services. The employees of SBC Pacific Bell also contribute financially and volunteer with many nonprofit community-based organizations.").

Perhaps most significantly, the one commenter in this proceeding whose view is entitled to "substantial weight" under the statute – the Department of Justice – "recommends that the FCC approve SBC's application," subject only to a few minor issues addressed below. DOJ Eval. at 2. Like the CLECs' own successes in the local market, DOJ's carefully reasoned recommendation reflects the comprehensive steps Pacific has taken to satisfy the competitive checklist and to open the local market to competition.

DOJ's favorable review also speaks to the "tireless[]" efforts of the California PUC to ensure an open local market. Id. The vigilance of the CPUC is reflected not only in the unprecedented length, depth, and breadth of its section 271 review, but also in the comprehensive performance reporting and incentives plan it has put in place, as well as in its aggressive oversight **of** the terms and conditions on which Pacific fulfills its duties under the *1996* Act. In addition, even **as** the Commission reviews this Application, the California PUC is continuing to evaluate the record it has assembled in order to make the findings contemplated by section 709.2 of the California Public Utilities Code, with the express goal of "promptly complet[ing] its . . . appraisal."[3] Although this Commission has exclusive authority to grant or deny SBC's application to provide all interLATA services originating in California – such that

[3] See Assigned Commissioner's Ruling on Concluding the California Public Utilities Code Section 709.2 Inquiry, Rulemaking on the Commission's Own Motion to Govern Open Access, R.93-04-003, at 2 (Cal. PUC Oct. 4, 2002), Attach. 3 to Ex Parte Letter from Colin S. Stretch on behalf of SBC to Marlene Dortch, FCC (Oct. 7, 2002)).

any purported parallel authority under state law would be either superfluous or preempted, depending on whether it was granted or denied – the CPUC's ongoing efforts should give the Commission comfort that the CPUC is moving quickly **to** eliminate even the appearance of a conflict between federal and state law.

Particularly in light of DOJ's and the CPUC's unbiased, favorable evaluations of the Application, the Commission should be highly skeptical of the self-interested efforts by AT&T and others to oppose it. **As** Chairman Powell has recognized, "[t]here will never be a 271 . . . to which there will not be a community of competitive entrants . . . like AT&T who will not scream that it was premature. Why? Because as far **as** they're concerned entry will never be right."[4] The time is right in California. The Application should be granted.

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The remainder of these reply comments are organized **as** follows: Part I reviews the state of local competition in California and explains that, in view of CLEC successes in the local market, Pacific is entitled to a presumption that the local market is open and the competitive checklist is satisfied. Part II responds to challenges to Pacific's showing of compliance with Checklist Item 2, addressing in particular issues related to OSS, pricing, and UNE combinations. Part III examines the public-interest standard set out in section 271, and makes clear that SBC satisfies that standard as the Commission has articulated it in prior section 271 orders. Part IV discusses SBC's showing of compliance with section 272, and demonstrates that AT&T's challenge to that showing is based on a misleading description **of a** consulting report that is

[4] Powell Defends Stance on Telecom Competition, Communications Daily, May 22, 2001.

presently the subject of litigation before the CPUC. Part V addresses CLECs' remaining challenges – including claims regarding Checklist Items 4 (unbundled loops), 5 (local transport), 11 (local number portability), 13 (reciprocal compensation for the exchange of local traffic), and 14 (resale) – and explains in each case that commenters have failed to rebut SBC's showing of compliance with the requirements of the 1996 Act.

I. IN LIGHT OF THE EXTENSIVE LOCAL. COMPETITION IN CALIFORNIA, THE COMMISSION SHOULD PRESUME THE LOCAL MARKET IS OPEN AND THE CHECKLIST IS SATISFIED

SBC's Application established that CLECs in California have used all three modes of entry contemplated by the 1996 Act to build-up a market presence that far exceeds that in place in New York or Texas – the *two* most populous states for which the Commission has reviewed section 271 applications previously – at the time applications for those states were filed. See, e.g., J.G. Smith Aff. Attach. D (App. A, Tab 22). Since the date of the Application, moreover, local competition in California has continued to expand. In the last *two* months, for example, competitors in California have added approximately 139,000 new lines using UNE-P alone. See J.G. Smith Reply Aff. ¶ 2 (Reply App., Tab 16).

Pointing to outdated and incomplete reports regarding competitive entry in California, a few commenters nevertheless suggest that competitive entry in California is stalled. See Sprint Comments at 10-13; AT&T Comments at 82-83; Vycera Comments at 26-27; PacWest Comments at 14-15.[5] These commenters do not, however, take issue with Pacific's methodologies for estimating CLEC lines. Nor has any party "uttered. . . a peep in protest,

[5] See also J.G. Smith Reply Aff. ¶¶ 4-5 (demonstrating that the reports on which these commenters rely are unreliable). References to "PacWest" herein refer to the Joint Comments of PacWest Telecomm., Inc., RCN Telecom Services, Inc., and U.S. Telepacific Corp.

correction or qualification" of the line counts SBC has attributed to individual CLECs. Sprint Communications Co. v. FCC, 274 F.3d 549,562 (D.C. Cir. 2001); see J.G. Smith Aff. Attach. E (documenting the extent of individual carriers' competitive presence in California). Because SBC's estimates of total competition in the state are derived in the same manner as those undisputed individual CLEC line counts, SBC's estimates are by far the most reliable information before the Commission. And those figures establish beyond legitimate dispute that local competition is thriving in California.

Indeed, in light of the extensive competition in California across all modes of entry, SBC is entitled to a presumption that the local market is open and the competitive checklist is satisfied. Simply put, the local market is at least as open in Califomia as it was in any section 271-approved state at the time of application, as evidenced by the number of UNEs ordered and services provided by CLECs. See J.G. Smith Aff. Attach. D. The presumption must therefore be that the issues commenters have raised in this proceeding are not competition-affecting, and are accordingly insufficient to call into question Pacific's compliance with the competitive checklist.

DOJ echoes that point. As DOJ explains, "[i]n assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market." DOJ Eval at 5. And as DOJ further emphasizes, the evidence regarding the availability of such entry is abundant in this case:

- "The amount of entry by facilities-based CLECs . . . , and the absence of evidence that entry. . . has been unduly hindered by problems . . . leads the Department to conclude that opportunities to serve both [residential and business] customers via facilities are available" in California. Id. at 7.

- "[D]ue in part to the paucity **of** CLEC complaints regarding resale," DOJ concludes "that SBC has fulfilled its obligations to open the resale mode of entry to competition for both residential and business customers in California." Id.

- To the extent there are "lower levels of [UNE-P] penetration," it "may reflect the higher UNE pricing that was in effect for most of the period preceding this application as opposed to the UNE prices on which the application is based." Id-

Thus, as DOJ explains, CLECs have proven their ability to compete on a facilities basis in the local exchange market in California, and they have not even suggested that they cannot do so over resale. And, as noted above, in the last two months for which data are available, CLECs capitalizing on the CPUC's interim rate order have increased their UNE-P penetration by approximately 139,000 lines. See J.G. Smith Reply Aff. ¶ **2.** This latest surge provides further evidence – if any were necessary – that the California local market is open to competition.

II. PACIFIC SATISFIES CHECKLIST ITEM 2

In a comprehensive discussion spanning more than 90 pages, the California PUC unequivocally concluded that Pacific satisfies the requirements of Checklist Item 2.[6] DOJ echoes that conclusion, subject only to clarification of Pacific's offer to limit any prospective true-up of its UNE-P rates, which we provide below. **As** we also demonstrate below, the issues raised by commenters in these areas fall well short of calling into question the CPUC's and DOJ's conclusions.

A. Nondiscriminatory Access to OSS

The Application demonstrates that Pacific offers competing carriers nondiscriminatory access to its OSS. See SBC Br. at 37-50; Huston/Lawson Joint Aff. (App. A, Tab 11). The

[6] See Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order That It Has Substantially Satisfied the Requirements of the 14-Point Checklist in § 271 of the Telecommunications Act of 1996 and Denying That It Has Satisfied § 709.2 of the Public Utilities Code, Rulemaking on the Commission's Own Motion to Govern Open Access, D.02-09-050, at 29-120 (Cal. PUC Sept. 19,2002) ("CPUC Final Decision"), Attach. 1 to Ex Parte Letter from Geoffrey M. Klineberg on behalf of SBC to Marlene Dortch, FCC (Sept. 30,2002).

California PUC, based on its extensive review of those systems and a comprehensive third-party test, agrees. See CPUC Final Decision at 120. Likewise, DOJ "recommends . . . approv[al]" of this Application, and identifies no OSS issues for this Commission's consideration. DOJ Eval. at 2. And data from August and September 2002 confirm that Pacific's OSS are handling commercial volumes of CLECs orders **and** are meeting or exceeding nearly all of the standards established by the California PUC. &Johnson Reply Aff. ¶ 8 (Reply App., Tab 10).[7] Although a few parties take issue with limited aspects of Pacific's OSS, their claims fall far short of rebutting Pacific's showing of checklist compliance.

Pre-ordering and Ordering. **As** explained in the Application, see SBC Br. at **37-44,** Pacific is providing CLECs with nondiscriminatory access to its pre-ordering and ordering OSS. Performance data from August and September 2002 demonstrate that Pacific has continued to provide CLECs with nondiscriminatory access to these aspects of its OSS. See Johnson Reply Aff. ¶¶ 14-17. Only one commenter, AT&T, raises any complaints with respect to Pacific's pre-ordering and ordering OSS, and its claims do not undermine Pacific's showing.

AT&T contends for the first time here that CLECs are not provided adequate information regarding the "alternative community names" that some end users can choose to include in their directory listings. See AT&T's Willard Decl. ¶¶ 11-12. Where available, alternative community names allow an end user living in a particular postal community (for example, "Danville") to choose an alternative, or prestige, community (in this example, "Blackhawk") listed in the white pages. AT&T contends that it is provided insufficient information regarding these listings, and

[7] See also **Ex** Parte Letter from Colin **S.** Stretch on behalf of SBC to Marlene Dortch, FCC (Oct. 28,2002) (enclosing performance data through September 2002).

that, as a result, its ability to submit orders for customers requesting such listings is hampered. See AT&T Comments at 38-39.

As an initial matter, because AT&T failed to raise this issue in the state proceeding, it should not be permitted to do so here. See Vermont Order ¶ 20; Massachusetts Order ¶ **147.** In any event, AT&T's claim is without merit. When a CLEC places an order to migrate an end user to UNE-P or to resale with no change to the end user's directory listing, then there is no need for the CLEC to provide ***any*** community name – alternative **or** actual – on the local service request ("LSR) form. See Huston/Lawson Joint Reply Aff. ¶ 27 (Reply App., Tab 9). It is only when the CLEC seeks to change an existing listing or to establish a brand new listing that the CLEC must enter a community name on the LSR. See id.

In these circumstances, Pacific provides CLECs with ample information to allow it to provide alternative listings to their end users. First, CLECs have access to a list of available alternative community names, both as a file that CLECs can download from the CLEC Online web site and integrate into their application-to-applicationinterface, and **through** a link in the Enhanced Verigate interface. See Huston/Lawson Joint Reply Aff. ¶¶ 20-22. With this information, and the ordering instructions contained in the CLEC Handbook, CLECs can offer their end users the option of selecting **an** available alternative community name for their directory listings. See id. ¶ 23. AT&T itself has proven this fact: it currently has numerous active listings in the Pacific region with alternative community names, the majority of which were ordered **as** part of a new or changed directory listing. See id. Pacific thus plainly enables CLECs, including AT&T, to provide alternative community listings to their end-user customers.

Second, a CLEC can determine the community name that a particular Pacific end user – one that it is seeking to migrate, for example – has chosen to appear in the white pages, by accessing the Directory Listing Inquiry transaction. See id. ¶ 24. This transaction, which is available through the current versions of three of Pacific's pre-ordering interfaces, returns the community name that is listed in the white pages, whether it is the alternative or the postal community name, and does so electronically and within seconds. See id.; Huston/Lawson Joint Aff. ¶ **112.**

AT&T claims to have received "invalid community name" rejects on about **6** percent of its August 2002 UNE-P LSRs, and it assumes those rejects resulted from its supposed lack **of** access to information regarding alternative community names. See AT&T's Willard Decl. ¶ 15. AT&T has not provided data supporting its claim, and Pacific believes it to be overstated. See Huston/Lawson Joint Reply Aff. ¶¶ **25-26.** In any case, the bulk of AT&T's "invalid community name" rejects appear to have resulted – not from any lack of access to alternative community name information – but rather from **two** systems issues that Pacific has fixed. See id. ¶ **26;** see also id. ¶¶ **28-30.**[8] The remainder of these rejects stem from error on the part of AT&T's representatives in entering information on the LSR. See id. ¶ **26.**

[8] As explained in the attachment to the Ex Parte Letter from Colin S. Stretch on behalf of SBC to Marlene Dortch FCC (Oct. 25, 2002), Pacific's Listings Gateway now recognizes valid community name abbreviations and therefore no longer rejects orders with these abbreviations. See also Huston/Lawson Joint Reply Aff. ¶ **28.** Pacific has also modified its systems so that the postal community is returned for the Address Validation pre-ordering transaction; previously, this transaction would return an alternative community name, if such a community were available *to* an end user. Accordingly, CLECs that use the community name returned on the Address Validation transaction should not receive a reject. See id. ¶¶ **29-30.**

AT&T next contends that Pacific has not provided evidence that its EDI interface can handle commercial volumes of UNE-P orders. See AT&T Comments at 44. Yet, from July through September 2002, Pacific processed approximately 285,000 UNE-P service orders created from LSRs submitted using EDI, as well as another approximately 45,000 UNE-P service orders created from LSRs submitted using LEX. See HustodLawson Joint Reply Aff. ¶ 38; see also HustodLawson Joint Aff. ¶ 161. These are unquestionably commercial volumes of UNE-P orders. AT&T, however, claims that these volumes are irrelevant, because it and other CLECs ordering UNE-P in California have chosen to continue passing orders over the LSOR 3.06 version of the EDI interface, rather than the newer LSOR 5.00 or 5.01 versions? But this Commission has never required a BOC to demonstrate that every version of its interfaces is handling commercial volumes. Such a requirement would hold a BOC's application hostage to the business plans of CLECs and "would perversely incent competing carriers to delay implementation of improved OSS." Massachusetts Order ¶ 63. Instead, the requirement is that "the OSS functions that the BOC has deployed are operationally ready, as a practical matter." E.g., New York Order ¶ 87 (internal quotation marks omitted); see also id. ¶ 136 (recognizing that "factors internal to [CLECs may] affect[] their decision [whether] to develop and commercially deploy an application-to-application interface"). Pacific plainly satisfies this standard.

What is more, the 45,000 UNE-P service orders Pacific has created from LSRs submitted using LEX were created using the LSOR 5.00 or 5.01 versions. Because the service order

[9] Pursuant to its versioning policy, Pacific currently makes three versions of the EDI ordering interface available: 3.06, 5.00, and 5.01. See HustodLawson Joint Aff. ¶¶ 251-252 & n.102.

creation and provisioning process is the same no matter which interface is used to submit an LSR, see Huston/Lawson Joint Aff. ¶¶ 175, 193, these orders demonstrate that Pacific's OSS can handle commercial volumes of UNE-P orders submitted using LSOR 5.00 or 5.01, see HustodLawson Joint Reply Aff. ¶¶ 35-36, 40; see also CPUC Final Decision at 83 ("the high number of UNE-P orders submitted through LEX allow us a reasonable substitute to gauge how well Pacific's backend system processed UNE-P orders" submitted through EDI)

Using the information and support mechanisms Pacific makes available to CLECs seeking to develop an EDI interface, see Huston/Lawson Joint Aff. ¶¶ 231-250, NightFire has developed an integrated EDI interface on the LSOR 5.00 version, see Saifullah Aff. Attach A § 1.2.1 (App. A, Tab 18). NightFire also received firm order confirmations on its test UNE-P LSRs, demonstrating that its EDI interface successfully passed the orders to Pacific's EDI interface. See id. Attach. A, App. C § 1.39. Accordingly, even if Pacific were required to demonstrate that the LSOR 5.xx versions of its EDI interface can handle commercial volumes of UNE-P orders – and it is not – it has done so. See Huston/Lawson Joint Reply Aff. ¶ 43.[10]

Maintenance and Repair. SBC demonstrated in its opening brief (at 45-46) that CLECs are able to use Pacific's maintenance and repair OSS to diagnose and process end-user troubles with substantially the same speed and accuracy as Pacific's retail operations. AT&T appears to dispute this showing, but the sole basis for its claim is that "AT&T's [own] commercial

[10] AT&T incorrectly suggests that difficulties another CLEC experienced in using the LSOR 5 version of EDI in the Ameritech region is relevant to the question whether that version can process commercial volumes of residential LJNE-P orders. See AT&T Comments at 44. Pacific's OSS showing in this respect does not rely on out-of-region evidence, so this claim is beside the point. In any event, the carrier in question was not upgrading from an LSOG 3.x version and was therefore required to create a brand new EDI gateway. See Huston/Lawson Joint Reply Aff. ¶¶ 44-45.

experience does not provide a sufficient basis on which to conclude that Pacific's maintenance and repair performance." AT&T's Willard Decl. ¶ 53.[11]

Pacific does not rely on AT&T's own "commercial experience" in demonstrating that its maintenance and repair OSS satisfy the requirements of the 1996 Act. Rather, Pacific relies on its EBTA-GUI interface – a uniform, 13-state interface implemented in December 2001 as part of SBC's Uniform and Enhanced Plan of Record that provides the maintenance and repair functionality required by the Act – and its EBTA platform, which processed more than one million CLEC transactions for local exchange service in July 2002 alone. See Huston/Lawson Joint Aff. ¶¶ 211,213-214; Motta Aff. ¶ 17 n.8 (App. A, Tab **15).** Nor does Commission precedent provide any support for AT&T's egocentric worldview: The Commission reviews Pacific's maintenance and repair performance for CLECs as a whole, not for any one CLEC individually. See, e.g., Kansas/Oklahoma Order ¶ 143; Texas Order ¶ 176. And Pacific's maintenance and repair showing with respect to CLECs as a whole plainly establishes that Pacific provides CLECs a meaningful opportunity to compete. See Johnson Reply Aff. ¶¶ 40-57; see also infra **Part** V.A.

Billing. As demonstrated in the Application – and as both the OSS test and the CPUC have found – Pacific provides timely, auditable, and accurate bills. SBC Br. at 47; Flynn Aff. (App. A, Tab 7). Pacific's performance in fulfilling these functions, moreover, has been

[11] AT&T's excuse for this lack of evidence is that it "only recently entered the residential service market in California." AT&T Comments at 48. In fact, AT&T has been providing residential service over its cable plant for years in California. Indeed, as early as July 2001, AT&T boasted of a 19-percenttelephony penetration in California's Bay Area, "'with many communities in the high 20s.'" J.G. Smith Aff. ¶ 15 (quoting AT&T Broadband Investor Presentation).

outstanding. See Flynn/Henry/Johnson Joint Reply Aff. ¶¶ 6, 37-39 (Reply App., Tab 5). No commenter takes issue with Pacific's provisioning of service usage information, nor does anyone challenge the timeliness of Pacific's wholesale bills. Indeed, of the approximately 90 CLECs doing business in California, see J.G. Smith Aff. ¶ 6, only three – Mpower, Vycera, and Telscape – complain at all about Pacific's wholesale bills. See Mpower Comments at 5-6; Vycera Comments at 10-12; Telscape October 18 **Ex** Parte" at 2-4. Their claims, however, fall well short of rebutting SBC's showing of checklist compliance.

As an initial matter, none of these commenters "has put forth the type of detailed analysis of its wholesale billing dispute" that this Commission has previously found is necessary to call into question a Bell company's prima facie case that its billing ***OSS*** satisfy the requirements of the Act. New Jersey Order ¶ 126. Indeed, in the New Jersey Order, this Commission found that CLECs' allegations of inaccurate billing were "not persuasive because they lack additional explanation as to the types of errors that make up the alleged . . . incorrect charges on their wholesale bills, and because [they] fail to clarify the actual percentage of their current wholesale bills that they have properly put into dispute with Verizon." Id.[13] Because Mpower, Vycera, and Telscape have provided no data to support their assertions of billing inaccuracies, the Commission should reject them out-of-hand. See New Jersey Order ¶ 126 (noting that, without concrete evidence, the Commission "cannot . . . find that the parties have demonstrated systemic

[12] Ex Parte Letter from Ross Buntrock on behalf of Telscape to Marlene Dortch, FCC (Oct. **18,** 2002) ("Telscape October **18 Ex** Parte").

[13] See also Public Notice, Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, 16 FCC Rcd 6923,6926 (2001) ("Filing Requirements Notice") ("factual assertions made by an applicant, or any commenter, must be supported by credible evidence").

inaccuracies in [Pacific]'s wholesale bills that would require a finding of checklist noncompliance").

Were the Commission to require an additional reason to reject these claims, the commenters themselves have provided it with their disregard of the Commission's filing requirements. In recognition of the difficulty **of** resolving a section 271 application in the statutorily mandated 90 days, the Commission has set out comprehensive filing requirements that ensure all parties an adequate period of time to review and comment upon the application, while also providing the applicant a fair and reasonable period of time in which to respond to those comments.[14] The bulk of Mpower's and Vycera's billing allegations – and all of Telscape's allegations – came well after the deadline for filing comments on the Application, thereby prejudicing Pacific by shortening the time to prepare reply comments.[15] These late-filed comments, moreover, were offered with no explanation, much less an excuse, for their delay. Such unexplained disregard of the Commission's procedural rules is inappropriate under any circumstances; it is particularly ill-suited to the highly compressed section 271 review process.

In any case, the allegations these commenters make are without merit. Consistent with this Commission's requirements, and as confirmed by the third-party OSS test, Pacific provides CLECs with a "readable, auditable and accurate wholesale" bill of record in the industry standard, electronic billing output specification ("BOS") format. Pennsylvania Order ¶¶ 21-22;

[14] See Filing Requirements Notice.

[15] See Ex Parte Letter from Marilyn Ash, Mpower, to Michael K. Powell, Chairman, FCC (Oct. 21, 2002); Ex Parte Letter from Ross Buntrock on behalf of Telscape to Marlene Dortch, FCC (Oct. 24, 2002) ("Telscape October 24 Ex Parte"); **Ex** Parte Letter from Patrick Donovan, et al., on behalf of Vycera to Marlene Dortch, FCC (Oct. 25, 2002).

see Flynn/Henry/Johnson Joint Reply Aff. ¶¶ 7-8. Mpower's claim to the contrary is simply wrong.[16] Furthermore, nearly **all** of the disputes that these commenters discuss at most "reflect past performance problems with [Pacific's] billing system'' that Pacific has already addressed. Pennsylvania Order ¶ 28; see Flynn/Henry/Johnson Joint Reply Aff. ¶¶ 13-36. In no case do these disputes "demonstrate that [Pacific]'s current wholesale billing systems are flawed today or were flawed at the time [Pacific] filed its application." Pennsylvania Order ¶ 28.

Nor have these commenters come close to carrying their burden of "demonstrat[ing] that [Pacific]'s billing performance is 'materially worse"' than in other states with section **271** approval. Virginia Order ¶ 40. In fact, over the past three months, Pacific has issued credits to CLECs amounting to approximately 1.3 percent of the total dollar value of the wholesale bills Pacific issued over that time. See Flynn/Henry/Johnson Joint Reply Aff. ¶ 37. That performance is ''well within the level" of error the Commission has previously concluded was acceptable in the section 271 context. New Jersey Order ¶ 127.[17]

Change Management and CLEC **Support.** Pacific's change management process is the same process that was in place when this Commission reviewed and approved southwestern Bell Telephone's ("SWBT") Arkansas/Missouri application. See Huston/Lawson Joint Aff. ¶ 224.

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[16] Mpower misleadingly suggests that it receives only a paper wholesale bill. See Mpower Comments at **5.** In fact, Mpower receives its wholesale bills from Pacific in both electronic and paper format. See Flynn/Henry/Johnson Joint Reply Aff. ¶ 8.

[17] Mpower and Vycera take issue with Pacific's process for resolving billing disputes. See Mpower Comments at 6-8; Vycera Comments at 11. Again, however, they provide no data to support these assertions. In contrast, based on its extensive review of Pacific's OSS, the California PUC found that "Pacific is demonstrating a clear commitment . . . to make collaborative efforts to identify (and resolve) any billing issues as they arise." CPUC Final Decision at 59; see also id. at 60; Flynn/Henry/Johnson Joint Reply Aff. ¶ 13.

Pacific has also demonstrated that it provides CLECs a wide variety of information about, and assistance in using, its ***OSS,*** as well as a stable testing environment that mirrors the production environment. See SBC Br. at 47-50. AT&T is the only commenter to take issue with this showing, raising narrow disputes about Pacific's test environment and its Mechanized Customer Production Support Center ("MCPSC"). See AT&T Comments at 40-43.

Before the California PUC, AT&T complained that Pacific's test environment was insufficient for the Southern California region, because it contains account information only for the Northern California region. See HustodLawson Joint Aff. ¶ **244.** Pacific explained that, because its systems handle orders for the Northern and Southern regions in the same manner, testing the same order scenario in both regions would be duplicative. See id. ¶¶ 245-246. AT&T has abandoned its original claim and now asserts – for the first time – that it cannot adequately test for **two** specific LATAs in California, which overlap the Northern and Southern regions. See AT&T Comments at 40; AT&T's Willard Decl. ¶ 35.[18] Again, however, because Pacific's systems handle orders for the Northern and Southern regions in the same manner, there is no need for AT&T to test both Southern and Northern region order scenarios for these **two** LATAs. See HustodLawson Joint Reply Aff. ¶¶ 46-49.

[18] Because AT&T failed to raise this issue in the state proceeding, it should not be permitted to do so for the first time here. See Vermont Order ¶ 20; Massachusetts Order ¶ 147. The same is true of AT&T's claim that it cannot test whether, after it converts to LSOR 5, the notifications it receives for pending orders that had been submitted using LSOR 3.06 will be received correctly. See AT&T Comments at 41. In any event, AT&T is currently receiving LSOR 3.06 notifications over its existing interface; because nothing will change with respect to those notifications when AT&T migrates to LSOR 5, there is no need for testing. See Huston/Lawson Joint Reply Aff. ¶¶ 50-51. Even if testing were necessary, AT&T can perform such testing by including this scenario in its own test plan. See id. ¶ 55.

With respect to the MCPSC, AT&T claims that it has experienced long hold times when calling this center. See AT&T Comments at 42; AT&T's Willard Decl. ¶ 28. To the extent CLECs experience hold times in the MCPSC, it is in some measure the fault of AT&T, which has repeatedly directed calls to that center that are plainly inappropriate — including, for example, directing one of its end-user customers to call the center — but that nonetheless tie up service representatives that would otherwise be responding to legitimate CLEC requests. See Huston/Lawson Joint Reply Aff. ¶¶ 11-17. In any event, as Pacific has already explained, although CLECs experienced extended MCPSC hold times in April and May 2002 following implementation of the Plan of Record, hold times and call volumes returned to the normal average of 2-7 minutes in June 2002. See Huston/Lawson Joint Aff. ¶¶ 268-270. Notably, AT&T does not claim to have experienced long hold times in July, August, or September 2002. See AT&T's Willard Decl. ¶ 28. In fact, from July through September 2002, MCPSC hold times for the Pacific/SWBT region averaged approximately two minutes. See Huston/Lawson Joint Reply Aff. ¶ 11 & Attach. B.

AT&T also claims that Pacific has not clearly delineated the responsibilities of the MCPSC and Pacific's Local Service Center ("LSC"). See AT&T Comments at 42-43. In fact, Pacific has provided CLECs with ample information regarding the respective functions performed by the two centers." The MCPSC, as its name indicates, addresses "mechanized" pre-order and order issues, including system navigation, the user guide, and business rule issues.

[19] See Accessible Letter CLECCS00-158 (Sept. 15,2000) (App. H, Tab 30); Accessible Letter CLECC02-068 (Feb. 26,2002) (App. G, Tab 50); see also Ex Parte Letter from Colin S. Stretch on behalf of SBC to Marlene Dortch, FCC (Oct. 17,2002) (attaching the MCPSC profile that was made available online as part of the CLEC Handbook in **January** 2001).

See Huston/Lawson Joint Reply Aff. ¶¶ 5-9. In contrast, the LSC handles issues requiring manual processing, such as jeopardies and manual rejects, as well as provisioning and billing issues. See id. ¶ 9. Accordingly, there is no basis for any confusion on AT&T's part with respect to the tasks handled by each center.

Finally, AT&T complains that there are no performance measurements specific to the MCPSC, and it suggests – in rather sinister fashion – that SBC is seeking to transfer duties to the MCPSC *so* that it may escape regulation. See AT&T Comments at **43;** AT&T's Willard Decl. ¶ **32.** In the more than two years since the MCPSC was established, however, neither AT&T nor any other CLEC requested the creation of measurements that would track its performance until after comments were filed on the Application (and even then the request was so lacking in detail as to be practically meaningless). See Johnson Reply Aff. ¶ **57** n.48. And, as for the suggestion that SBC has been steadily moving functions to the MCPSC from the LSC, it is false. The functions of the MCPSC have changed very little during the **two** years it has been in place. See Huston/Lawson Joint Reply Aff. ¶¶ 5-9.

B. Pricing

As SBC explained in its opening brief (at **25-30),** the California PUC complied with the requirements of the statute and this Commission's TELRIC rules when establishing rates for UNEs in the Open Access and Network Architecture Development ("OANAD) proceeding. The few commenters that dispute this showing wholly fail to meet their burden of establishing that the CPUC violated basic TELRIC principles or made erroneous factual findings on matters so substantial that the resulting rates fall outside the range that a reasonable application of TELRIC would produce.

In fact, in marked contrast to prior applications, where AT&T has mounted an assault on the state commission's rates as if the section 271 process were a full-scale cost proceeding, AT&T has provided just a few so-called "examples" of how the rates established by the California PUC are inconsistent with TELRIC. These examples are easily rebutted (as explained more fully below), so AT&T's entire challenge to the TELIUC-based nature of Pacific's rates comes down to the assertion that the rates are "old." But, for one thing, this challenge rests on the necessary assumption that costs automatically decline over time. As at least one prominent CLEC has acknowledged, that assumption is misplaced.[20] And, in any event, as the D.C. Circuit concluded less than two weeks ago, "the mere age of a rate doesn't render the FCC's reliance on it unreasonable; we can reverse the Commission'sjudgment only if it sufficiently disregarded the issue of the rate's age so as to adopt rates that were unreasonably outdated." WorldCom. Inc. v. FCC, No. 01-1198, et al., 2002 WL 31360443, at *5 (D.C. Cir. Oct. 22,2002). There is nothing "unreasonably outdated" about the rates currently in effect; not only were they cost-based when originally adopted, but the California PUC's "Relook" proceedings ensure that the UNE rates will remain TELRIC-compliant as costs change. As the D.C. Circuit recently concluded, "it is reasonable for the FCC to rely on the states' periodic rate revision process as a means of correcting flaws in adopted rates." Id. at *6.

The UNE rates currently in effect in California are TELRIC-based, and this Commission has ample grounds to so conclude. But in order to provide additional comfort to the Commission

[20] In defending the FCC's TELRIC methodology before the United States Supreme Court, counsel for WorldCom – who was arguing on behalf of AT&T as well – expressly conceded that "loop costs have not come down" but rather have been "stable over time." ***See*** Oral Arg. Tr. at 74-75, Verizon Communications Inc. v. FCC, Nos. 00-511, et al. (U.S. Oct. 10, 2001).

that the interim rates for those elements constituting the UNE-P are reasonable, SBC has also presented evidence that these interim rates are within the Texas benchmark – i.e., the percentage difference in rates is more than justified by the differences in costs, as reflected in this Commission's Universal Service Fund ("USF") model. See generally Makarewicz Aff. (App. A, Tab 14). AT&T attacks the use of Texas rates as a benchmark in this proceeding, reiterating claims that the rates are too old and that costs have come down. As explained below (and in detail in Thomas J. Makarewicz's reply affidavit), however, Texas is entirely suitable as a benchmark under this Commission's prior orders, and AT&T's evidence of declining costs is unpersuasive and incorrect. The Texas rates remain TELRIC-based today, and the fact that California's interim UNE-P rates are well below what the benchmark would require (together with the fact that Pacific has committed to true those rates up to a point no higher than the Texas benchmark) is simply further support that the rates currently in place in California are consistent with 47 U.S.C. § 252(d)(1) and this Commission's rules.

1. The Rates Established in OANAD Are TELRIC-Based, and No Commenter Has Persuasively Demonstrated Otherwise

AT&T is the only commenter who has seriously challenged Pacific's claim that the rates in California are TELRIC-compliant, yet its "evidence" is wholly unpersuasive. Specifically, AT&T makes three arguments: First, that the California PUC expressly found that Pacific's nonrecurring rates recover certain recurring costs in violation of this Commission's TELRIC rules; second, that by charging separately for vertical features, Pacific recovers costs that only exist because Pacific has unlawfully implemented a separate vertical-features charge; and, third, that the interim rates in place in California do not adequately reflect the reduction in costs that has occurred since the permanent rates were originally established. See AT&T Comments at 15-19, 26-29. Each of these claims is off-base.

As discussed in detail in the reply affidavit of Richard L. Scholl, the California PUC never "recognized" that Pacific's nonrecurring rates recovered recurring costs. In the portion of OANAD raised by AT&T, the question the CPUC faced was whether nonrecurring costs could include any costs associated with so-called "secondary investment" items, such as installation trucks and administrative space occupied by installation technicians. See Scholl Reply Aff. ¶ 10 (Reply App., Tab 13). Clearly, these costs are not the sort **of** costs incurred periodically over time, but rather are costs associated with the installation of a UNE at the time the UNE is installed. In other words, such costs are clearly nonrecurring and should be recovered through nonrecurring charges. **As** Richard Scholl explains, "[t]he costs at issue are the costs of the one-time event **of** using a capitalized item (e.g., a truck) while installing a UNE, not costs of ongoing events." Id. ¶ **14.** Accordingly, these costs are properly recovered in Pacific's nonrecurring rates.

AT&T contends (at 28) that the California PUC agreed with its claim that the costs in question are recurring – and therefore should not be captured in nonrecurring rates – but precisely the opposite is true. By setting nonrecurring rates on the basis **of** Pacific's nonrecurring cost studies *after* the Supreme Court's January 1999 decision in AT&T Corp. **v.** Iowa Utilities Board, 525 U.S. 366 (1999), the California PUC implicitly (and appropriately) rejected AT&T's argument that costs associated with secondary investments must be removed from the nonrecurring UNE costs. See Interim Decision Setting Final Prices for Network Elements Offered by Pacific Bell, Rulemaking on the Commission's Own Motion to Govern Open Access, D.99-11-050, at 269 (Ordering ¶ 2) (Cal. PUC Nov. 18, 1999) (App. C, Tab 60). In sum, far from being an example of a failure properly to apply this Commission's TELRIC methodology, the California PUC's rejection of AT&T's position that these nonrecurring costs

ought to be recovered through recurring rates is entirely consistent with this Commission's principle that costs should be recovered in a manner that reflects the way they are incurred. Scholl Reply Aff. ¶ 11.[21]

AT&T fares no better with its vertical-features argument. According to AT&T, "[b]ecause providing a vertical feature using a modem switch requires nothing more than 'activating' software that already exists in the switch," AT&T Comments at 27, it is a violation of TELFUC for Pacific to recover a separate charge for each vertical feature. But AT&T misunderstands how vertical-feature costs are incurred. Although it is certainly true that the capability of providing a vertical feature is included within the hardware and software of a modem switch, the costs of actually using those vertical features – like switch usage itself – is incurred only when the vertical feature is actually used. **As** Richard Scholl explains, "the costs of a vertical feature (as opposed to the cost of the capability of providing features) is a usage sensitive cost that is incurred each and every time the feature is used. This is identical to the manner in which costs of switch usage are identified." Scholl Reply **Aff.** ¶ 20. It is simply incorrect, therefore, to suggest that the costs recovered through the vertical-feature charges are those that Pacific "artificially creates" in order to manage and bill each of the individual vertical features. See AT&T Comments at **27.** While the vertical-feature UNE TELRICs include costs of billing inquiries and product support for these UNEs, Pacific's own TSLRIC studies identified retail billing inquiry costs and product support costs for the various services it provides, including vertical features. See Scholl Reply Aff. ¶ **23.** In other words, Pacific's wholesale costs

[21] In any case, even a cursory examination of the nonrecurring charges associated with the UNE-P in California reveals that the rates in place are well within the range that a reasonable application of TELRIC would produce. See Vandeloop Aff. ¶ **45** n.60 & Attach. B (App. A, Tab **23).**

and retail costs are calculated in the same way, and AT&T is entirely incorrect when it states (at 28) that "Pacific does not impute to itself any costs associated with 'managing' or 'billing' vertical features."

With respect to DS1 and DS3 rates, XO argues that these rates must be unlawful because – and only because – they are higher than rates in other states. See XO Comments at 6. But this Commission has consistently recognized that "mere evidence that [a state's rate] . . . is higher than the comparable. . . rate [in another state] does not demonstrate that the [state commission] committed any clear error when it adopted the rate." Vermont Order ¶ 37; see New Jersey Order ¶ 59.[22] Nor is it significant that the state to which XO refers (Texas) is the same state Pacific relies upon to benchmark other UNE rates (specifically, the rate elements that make up the UNE-P). The Commission has made clear that it "will not apply [the] benchmark analysis to reject UNE rates arrived at through a proceeding that correctly applied TELRIC principles." Vermont Order 126.

In any case, the California PUC thoroughly reviewed the TELRIC costs for the DS1 **loop** and entrance facility and the DS3 entrance facility and set rates based on a forward-looking cost methodology. See Scholl Reply Aff. ¶ **31.** With respect to the DS3 loop, in OANAD, Pacific provided evidence that the design of the DS3 entrance facility and the design of the DS3 loop were identical. In reviewing the cost studies underlying the DS3 entrance facility and in

[22] Another commenter makes the same argument regarding the CNAM rate in California – that Pacific's rate cannot be lawful because it is higher than Verizon's rate in New York. See PacWest Comments at 36. Yet, even if this party had introduced any evidence that would call into question the cost-based nature of this rate, it has never challenged this rate before the California PUC, see Vandeloop Reply **Aff.** ¶ 10 (Reply App., Tab 17). "[I]t is both impracticable and inappropriate for [this Commission] to make many of the fact-specific findings the parties seek in this section 271 review, when many of the [state commission's] fact-specific findings have not been challenged below." Vermont Order ¶ 20.

establishing a TELRIC-based rate for that UNE, the California PUC effectively established a TELRIC-based rate for DS3 loops as well. See id. ¶ 33. In the absence of any evidence that the California PUC made TELRIC errors in establishing these rates, this Commission has no basis to conclude that the DS1 and DS3 rates are anything but reasonable. Moreover, by making these rates interim subject to true-up pending the outcome of the California PUC's ongoing "Relook" process, Pacific has ensured that any carriers who purchase DS1 **or** DS3 loops will pay no more than the new rates that will be established during that proceeding.

On October 18,2002, Pacific submitted its cost studies for DS3 loops to the California PUC, as part of the "Relook" process. The rate for **a** DS3 loop that Pacific has proposed is $573.20, which is lower than the TELRIC-based rate established by the California PUC. In a further effort to respond to XO's concerns, Pacific has voluntarily offered to make its DS3 loops available at its proposed rate – i.e., $573.20 – on **an** interim basis, subject to true up when the final rate is established in the "Relook" process (or until such time as Pacific is no longer required to make the DS3 loop available as an unbundled network element). See Vandeloop Reply Aff. ¶ 16n.44.[23] CLECs can take advantage of both Pacific's offer to treat the DSI and DS3 rates as interim subject to true-up and its offer to lower the interim DS3 rate by amending their interconnection agreements. See id. Attach. **A** (SBC Pacific Bell Accessible Letter CLECO2-302).

Finally, various commenters have objected generally to the fact that the California PUC has established interim rates pending the completion of the permanent "Relook" process. Of

[23] There is no similar justification for changing the DS1 interim rate. The current rate in place in California is no barrier to entry – Pacific has provided approximately 19,000 DS1 UNEs to California CLECs – and Pacific has recently proposed an increase in the DS1 rate based on its forward-looking, TELRIC-based cost study. See Vandeloop Reply Aff. ¶ 16n.44.

course, it was AT&T, together with WorldCom, that sought the establishment of interim loop and switching rates in the first place, and it was AT&T that stated, after the California PUC imposed such interim rates, that those rates constituted "the most significant step yet to level the playing field and set the stage for real competition to take hold in California's local residential and small business phone market."[24] Nevertheless, AT&T now argues that these interim rates are insufficient, and that the California PUC should have simply accepted AT&T's evidence of cost declines without further review. See AT&T Comments at **29-30.**

That claim is plainly misguided. To be sure, the California PUC concluded AT&T and WorldCom had provided "preliminary evidence of expense cost declines based on actual data,"" but the whole purpose of the "Relook" process is to review all the evidence with respect to costs and to establish permanent rates based on a forward-looking cost methodology. This Commission has consistently accepted interim rates established by a state commission that has demonstrated a commitment to TELRIC, provided that those interim rates are reasonable and provision is made for refunds or true-ups once permanent rates are established. See Texas Order ¶¶ **88,236;** Kansas/Oklahoma Order ¶ **238;** New York Order ¶ **258;** Arkansas/Missouri Order ¶ **64.**

Pacific's interim rates meet each of those requirements. The CPUC set the interim rates by reducing Pacific's unbundled loop rate by **15.1** percent, its unbundled local switching rate by **69.4** percent, and its unbundled tandem switching rate by **79.3** percent. See Interim Rate Order

[24] AT&T News Release, New Rates To Spur Local Phone Competition in California (May **16, 2002),** Attach. L to the affidavit of J.G. Smith.

[25] Interim Opinion Establishing Interim Rates for Pacific Bell Telephone Company's Unbundled Loop and Unbundled Switching Network Elements, Joint Application of AT&T Communications of California. Inc. and WorldCom, Inc., **D.02-05-042,** at **40** (Cal. PUC May **16, 2002)** ("Interim Rate Order") (App. C, Tab **77).**

App. A; Vandeloop Aff. ¶ 26. Although AT&T is correct that these reductions were not themselves "based on any rigorous application of TELRIC principles," AT&T Comments at 16, the CPUC established the interim rates by taking uniform reductions off rates that were originally set through one of the most rigorous and painstaking TELRIC proceedings in the country. See Scholl Aff. ¶¶ 35-80 (App. A, Tab 19). If AT&T is correct that costs have come down ***so*** far that even these interim rates are too high, then the California PUC will not hesitate to reduce the rates even further. And because the interim rates are subject to true-up, any CLEC purchasing UNEs during the period before permanent rates are established will be treated as if they were paying the permanent rates all along.

The existence of interim rates reflects a fundamental feature of the rate-making process: regulatory processes cannot always keep pace with fluctuating costs. The D.C. Circuit recently acknowledged the importance of this fundamental point:

> [A] state's TELRIC rates could not always reflect the most recently available information, since rate determinations consume substantial periods of time and cannot be constantly undertaken. Indeed, a process of Penelope-like unraveling and reinvention would, like hers, prove endless. And in upholding TELRIC, the Supreme Court affirmatively invoked the likelihood of a regulatory lag, saying that such a lag would prevent TELRIC prices from dropping **so** low as to unduly tempt CLECs to rely on ILEC-supplied UNEs rather than build their own facilities.

WorldCom, 2002 WL 31360443, at *5 (citation omitted).

2. The Texas Rates Currently in Effect Constitute a Valid Benchmark with Which To Analyze the Reasonableness of the Interim Rates

The interim rates in California for those elements that constitute the UNE-P are reasonable at least in part because they fall within a reasonable range of the rates currently in effect in Texas. Of course, Pacific's position is that the original OANAD rates were established through the application of a forward-looking, TELRIC methodology and that the interim rates, which are simply discounts off those TELRIC rates, are certainly no higher than TELRIC-based

rates. Nevertheless, in order to eliminate any doubt as to the reasonableness of these rates, Pacific has compared the rates in California with the rates found to be TELRIC-based in Texas and found that the differences in rates are more than accounted for by differences in cost.

AT&T objects to this benchmark analysis on the grounds that Texas rates cannot serve as a benchmark. See AT&T Comments at 19-26. According to AT&T, differences between Texas and California are so great, and the rates in Texas are now ***so*** old, that the fact that the California loop and non-loop rates are all within a reasonable range of the Texas benchmark is irrelevant. Id. at 26. For the reasons discussed below (and in Thomas Makarewicz's reply affidavit), however, Texas rates remain perfectly appropriate as a means of evaluating the reasonableness of California's interim rates.

a. The Texas Rates Remain TELRIC-Based

The rates currently in place in Texas were TELRIC-based when they were established and remain ***so*** today. This Commission has repeatedly concluded that the Texas rates were appropriately set using a forward-looking cost methodology. See, e.g., Kansas/Oklahoma Order ¶ 82 n.244, Arkansas/Missouri Order ¶ 56.

AT&T misleadingly suggests that the Public Utility Commission of Texas ("Texas Commission") has somehow concluded that the Texas rates are no longer cost-based. See AT&T Comments at 20. In reality, the Texas Commission merely concluded that it was now appropriate to reexamine some of the UNE rates. The Arbitrators also noted that, "until cost study evaluations are conducted, it is unclear whether or in which direction fonvard-looking loop costs might move. Loop rates are a function of numerous costs, some of which may have

increased over time and others which may have decreased."[26] The Texas Commission thus "clearly recognizes that until the studies are actually performed, one cannot make the automatic assumption that the costs have decreased. Nowhere has the [Texas Commission] stated that [Southwestem Bell's] UNE rates in Texas established in the MegaArbitration are no longer TELRIC-compliant." Makarewicz Reply Aff. ¶ 15 (Reply App., Tab 12).

Nor is the evidence in this record remotely sufficient to permit the Commission to conclude that costs in Texas have declined so substantially as to render Southwestern Bell's UNE rates no longer TELRIC-compliant. Indeed, the "evidence" on which AT&T now purports to rely on this point is remarkably deficient. First, ARMIS data is entirely inappropriate as a means of evaluating costs under a forward-looking, TELRIC methodology. See id. ¶ *6*. The ARMIS database reflects historical, embedded costs, which makes it a **very** poor mechanism for predicting changes in TELRIC costs.

Second, AT&T's witnesses have misused the ARMIS data in at least two significant respects. They incorrectly calculated the loop investment per line by inappropriately including investments for interoffice transport, which has nothing to do with costs of a local loop facility. Id. ¶ 8. In addition, they have vastly overstated the relevant number of access lines by using voice-grade equivalents for DS1 and DS3. While these voice-grade-equivalent numbers may be relevant for some purposes – including, for example, calculating CLEC penetration of the local market – they are not relevant when determining the amount of cable and wire investment per line. Simply put, AT&T's witnesses should not have counted DS1 and **DS3** lines multiple times.

[26] Arbitration Award, Petition of MCImetro Access Transmission Services. LLC, et al.. for Arbitration with Southwestem Bell Telephone Company Under the Telecommunications Act of 1996, PUC Docket No. 24542, at 96 (Tex. PUC May 1,2002).

See id. ¶ 9. Having done so, they have vastly overstated the number of access lines, with the predictable effect of understating the ratio of loop investment per line.

Had AT&T's witnesses undertaken a more rational analysis of ARMIS data, they would have found a 19.3 percent ***increase*** in total investment per loop between 1996 and 2001 instead of the 13.7 percent decrease they purport to show. See id. ¶ 10, Table 1. With respect to switching rates, a more appropriate application of the **ARMIS** data does indicate a modest decrease of 5.7 percent in switching investment per dial equipment minute ("DEM), as opposed to the 18.1 percent decrease that AT&T's witnesses have dreamed up. But, even assuming this decrease in switching investment per DEM reflected a decrease in forward-looking switching costs, such a modest decrease hardly renders the Texas rates no longer TELRIC-compliant. And, in any case, the California non-loop rates are ***so*** far below the Texas non-loop rates that they would still satisfy the benchmark, even taking into account this modest decrease in switching costs. Id. ¶ 12 & n.9.

The D.C. Circuit recently made clear that no one should "expect the § 271 process to grow into a fill-scale ratemaking on the part of the FCC, if for no other reason than the time constraints imposed by the 90-day limit." WorldCom, 2002 WL 31360443, at ***4.** The question, then, is whether AT&T has "tender[ed] evidence **of** benchmark unreasonableness so strong as to preclude FCC approval [of using the Texas rates as a benchmark] without a hearing." Id. The evidence that AT&T has offered in this record falls well short of the demanding standard established by the court **of** appeals.

That is especially ***so*** in light of the new rate proceeding that is underway in Texas. That proceeding is precisely the sort of periodic rate review on which this Commission is entitled to rely. See id. at *5. Although it is true that this Commission has refused to use superseded rates

as a benchmark, even where those rates have been the basis for a prior approval of a section 271 application, see Rhode Island Order ¶ 46, it has refused to do so only after the state commission has established new rates. If the Texas Commission establishes new rates, this Commission would presumably no longer use the prior rates for any future benchmark comparisons. But in the absence of either new Texas rates or persuasive evidence that the existing rates are no longer cost-based, this Commission is free to use the existing Texas rates as a benchmark to confirm that the interim rates in California are reasonable.

b. Texas Clearly Qualifies as a Reasonable State for Benchmarking the California Rates

Prior to the Pennsylvania Order, this Commission had established a four-part test for determining whether a state could reasonably serve as a benchmark state for comparison purposes. See Massachusetts Order ¶ 28 (comparing rates in Massachusetts and New York is appropriate because "[t]he states are adjoining, they have similar rate structures, the Commission has found the New York rates are within a zone that is consistent with TELRIC based on current information in the record, and it is the same BOC in both states"); see also Kansas/Oklahoma Order ¶ 82. But in the Pennsylvania Order, this Commission abandoned any strict application of this four-part test in favor of a rule of reason:

> [W]hile a comparison state's rates must have been found reasonable, the remaining criteria previously set forth should he treated as indicia of the reasonableness of the comparison. . . . [I]t is clear that the most relevant factor of the four-part test is TELRIC compliance. . . . The other criteria do not rise to such a level. They are useful to assure **us** that a comparison is meaningful, hut the absence of any one of them does not render a comparison meaningless.

Pennsylvania Order ¶ 64. The Commission reiterated this point most recently in its New Hampshire/Delaware Order, where it stated that "the BOC need only show that the benchmark state's rates fall within the TELRIC range. The standard is not whether a certain state is a better

benchmark, but whether the state selected is a reasonable one." New Hampshire/Delaware Order ¶ 42 (footnote omitted); see also WorldCom, 2002 WL 31360443, at *4 ("The FCC need not choose the 'optimal' benchmark, only a reasonable one.").

AT&T argues that Texas cannot serve as a comparison state for California because the states are geographically distinct, the rate structures are dissimilar, and they have historically been served by different BOCs. See AT&T Comments at 23-26. But Pacific has already accounted for differences in the rate structures between the two states by making appropriate adjustments in its benchmark comparison. See Makarewicz Reply Aff. ¶¶ 18-21. AT&T identifies certain geographic and demographic differences between the states (without bothering to cite a single source), yet it never explains why any such differences are more relevant than the similarities identified by Pacific. As with any *two* states, there are similarities and differences, and Pacific's burden is simply to demonstrate that there are sufficient similarities to make the comparison between California and Texas reasonable. Nothing in AT&T's comments undermines that essential showing.

Finally, this Commission has already concluded that the fact that two states are served by different BOCs is insufficient to undermine the reasonableness of a benchmark comparison. See Pennsylvania Order ¶ 64. Because the USF model makes no distinctions among data from different BOCs, there is no reason to doubt the reasonableness of a comparison of the rates among states with different BOCs. See Makarewicz Aff. ¶¶ 24-25

3. Pacific Has Taken Steps To Minimize the Uncertainty Associated with Interim Rates

AT&T complains that the current UNE-P rates are interim. Yet, as noted above, it was AT&T (together with WorldCom) that petitioned the CPUC to establish interim rates pending the completion of the "Relook" process. See Vandeloop Reply Aff. ¶ 11. And it was AT&T that

applauded the CPUC upon adopting interim rates that are considerably lower than the "permanent," TELRIC-based rates that were established through the OANAD proceedings. See J.G. Smith Aff. ¶ 18.

Moreover, although interim rates are, by definition, less certain than permanent rates would be, Pacific has taken unprecedented steps to minimize this uncertainty during the interim period. CLECs know that the rates they will be charged for the elements of the UNE-P will not exceed the Texas benchmark during the period before permanent rates are established.[27] Of course, the Texas-benchmark "ceiling" will only be reached if the California PUC establishes permanent rates in the "Relook" process that substantially exceed the interim rates currently in effect. In other words, in contrast to every other situation in which this Commission has reviewed (and approved) interim rates in past section 271 applications, CLECs in California already know the maximum rate that they would ever have to pay during this interim period. See Vandeloop Reply Aff. ¶ 15.

In its Evaluation, DOJ expressed concern over what it identified as an ambiguity in Pacific's true-up commitment – i.e., if the Texas Commission establishes new UNE rates before the California PUC has completed its "Relook" process, would the "ceiling" for any true-up be the new Texas rates or the rates currently in place? See DOJ Eval. at 7-8. Pacific's commitment

[27] Pacific's true-up commitment for the non-loop elements of the UNE-P assumes an average number of vertical features, which Pacific has conservatively estimated to be three per access line. See Vandeloop Reply Aff. ¶ 14 n.37; Makarewicz Aff. ¶ 13 n.17. This Commission's benchmark analysis has always been based on an "average" rate, see Kansas/Oklahoma Order ¶ 83 (comparing "a weighted average of loop rates in Oklahoma and Texas"); Pennsylvania Order ¶ 67 n.252 (taking the weighted average **of** the non-loop elements of the UNE-P and making certain monthly per-line usage assumptions), and Pacific's true-up commitment ensures that, on average, CLECs will not pay more than the benchmarked Texas rates during the period in which interim rates are in effect.

is to true-up the rates to the benchmark as established by the current Texas rates. See Vandeloop Reply Aff. ¶ 14. That will minimize the uncertainty of which CLECs have complained, for there is no way to know what the new Texas rates will be. Indeed, there is no way to know whether they will be higher or lower than the current Texas rates. In any case, should the Texas rates change before the California PUC has established permanent rates in the "Relook" process, then Pacific and other interested parties can address the effect of any such change on Pacific's true-up options before the California PUC. See id. ¶ 15. There is no need **for** this Commission to attempt to resolve a hypothetical question that is dependent on both the timing and the outcome of **two** hotly contested state commission rate proceedings.

C. UNE Combinations

AT&T contends that Pacific has not "firmly committed" to this Commission's combinations rules, because it has invoked the change-of-law provision in its interconnection agreement. See AT&T Comments at 30-36. But AT&T concedes that Pacific's current practice – dictated by its binding interconnection agreements – is "to provide access **to** new combinations on the same terms as it provided access to 'preexisting' combinations." Id. **at** 32. AT&T's claim, then, is that it simply does not like the fact that Pacific has invoked the approved change-of-law process to renegotiate (and, if necessary, arbitrate) new terms in light of Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002).

As Colleen L. Shannon explains in her reply affidavit, Pacific had to trigger the change-of-law provision within 30 days of the date the Verizon case became final. & Shannon Reply Aff. ¶ 10 (Reply App., Tab 14). Because AT&T cannot argue that Pacific does not now provide access to all UNE combinations required under its binding interconnection agreement, its comments amount to nothing more than a disagreement with Pacific's negotiating position. Id.

¶ 12. Pacific will not implement any changes to its current policy to provide UNE combinations in connection with the AT&T interconnection agreement until the negotiations and/or arbitration are complete, or until this Commission clarifies its rules in light of Verizon. See id. This Commission has recognized in analogous circumstances that its "review must be limited to present issues **of** compliance," notwithstanding the fact that a company's legal interpretation may raise "potential future compliance issues." Kansas/Oklahoma Order ¶ 234.

III. SBC'S ENTRY INTO THE INTERLATA SERVICES MARKET IN CALIFORNIA WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

As part of its section 271 review, this Commission must assess whether granting the "requested authorization is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). **As** the Commission has stated on numerous occasions, its public-interest analysis provides "an opportunity to review the circumstances presented by the application **to** ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected." E.g., New Hampshire/Delaware Order App. F, ¶ 71.

SBC's opening brief explained that the traditional tests for whether **an** application is consistent with the public interest have all been satisfied here. Pacific has complied with the competitive checklist itself, there is no evidence that the local market is nevertheless closed, and Pacific has in place a comprehensive performance reporting and monitoring plan to ensure continued nondiscriminatory service after Pacific receives section 271 authorization. See, e.g., Georgia/Louisiana Order ¶ 291; Kansas/Oklahoma Order ¶ ***266.*** In these circumstances, the Commission's long-standing presumption that SBC's entry into the interLATA market in California will further the public interest is plainly on point,